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FAST TRACK EMERGENCY REGULATIONS (For Discussion Only) September 28, 2000

Title 20, California Code of Regulations
Division 2 — State Energy Resources Conservation and Development Commission

Chapter 5 — Site Certification

Article 7 (new) — Additional Provisions for Considering Expedited Applications Under
Public Resources Code Section 25550

SECTION 2021. APPLICABILITY OF REGULATIONS.

The provisions of this section apply to all applications filed pursuant to Public Resources Code section 25550, notwithstanding any other provision to the contrary in Chapters 1, 2, and 5. This section changes the otherwise applicable deadline for a final decision on an application for certification and adjusts other procedural deadlines as appropriate. This section does not modify any substantive or other procedural requirements applicable to an application proceeding.

Section 2022. Information Requirements

- (a) Any applicant requesting that the commission reach a decision on an application for certification within six months after acceptance of the application shall meet the requirements of this section.
- (b) To be eligible for a decision within six months after acceptance of an application, the application shall contain all of the information required in Appendix B to this Chapter. The application shall also contain all of the following:
 - (1) Substantial evidence that the project as proposed in the application will comply with all applicable standards, ordinances, and laws in existence at the time the application is submitted to the commission, including:
 - (A) a list of all such standards, ordinances, and laws;
 - (B) information demonstrating that the project as proposed in the application complies with all such standards, ordinances, and laws; and
 - (C) a list of the requirements for permitting by each federal, state, regional, and local agency that has jurisdiction over the proposed project or that would have jurisdiction, but for the exclusive

jurisdiction of the commission, and the information necessary to meet those requirements;

- (2) substantial evidence that the project as proposed in the application will not cause a significant adverse impact on the environment, including all the following:
- (A) a detailed modeling analysis of the cumulative impacts of all inert criteria pollutants (NO_x, SO₂, CO, and PM₁₀) from the project's typical operating mode in combination with all sources within a six-mile radius of the proposed site that have received construction permits but are not yet operational, and/or sources that are currently undergoing air district permit application review;
 - (B) a description of the project's planned initial commissioning phase, which is the phase between the first firing of emissions sources and the consistent production of electricity for sale to the market, including the types and durations of equipment tests, criteria pollutant emissions, and monitoring techniques to be used during such tests, and air dispersion modeling analyses of the impacts of those emissions on state and federal ambient air quality standards for NO₂, SO₂, CO, and PM₁₀;
 - (C) a demonstration that the applicant owns, or has a binding option to own, all air emission offsets that fully satisfy the applicable air district's requirements under its new source review rule;
 - (D) a detailed description of the mitigation, which an applicant shall propose, for all project impacts from criteria pollutants that currently exceed state or federal ambient air quality standards, but are not subject to offset requirements under the district's new source review rule;
 - (E) a modeling analysis that identifies the extent of potential public exposure to toxic substances, as identified in subsection (g)(9)(A) of Appendix B, resulting from normal facility operation;
 - (F) if the project will result in a discharge of waste that could affect the water quality of the state, a complete report of proposed waste discharge as required by section 13260 of the Water Code that allows for issuance of waste discharge requirements by the appropriate regional water quality control board within 100 days after the filing of the application;
 - (G) a demonstration, based on appropriate data including, but not limited to, scientific surveys taken at the appropriate time of year, that

the project will have no significant impact on wetlands, plant or animal species that are endangered, threatened, or of concern under state or federal law, or the areas listed in Public Resources Code section 25527;

(H) with respect to the handling of hazardous materials, a demonstration that:

(i) the project will not use or store any regulated substance defined in Section 25532(g) of the California Health and Safety Code or

(ii) the project is eligible for Program 1 status pursuant to Section 68.10 of Part 68 of Title 40 of the Code of Federal Regulations and

(iii) no regulated substances will be used or stored at the project site in a liquefied gas form;

(I) demonstration that the boundary of the powerplant site will not be within 1000 feet of any residential area, school, general acute care hospital, long-term health care facility, or child day care facility as such terms are defined in section 25534.1 of the Health and Safety Code; and

(J) a demonstration that the proposed facility will not require storage of gaseous flammable or explosive materials in quantities greater than 1000 standard cubic feet;

(3) substantial evidence that the project will not cause a significant adverse impact on the electrical system, including all of the following:

(A) a demonstration that the California Independent System Operator (Cal-ISO), or other applicable interconnecting authority, and the transmission owner have preliminarily approved the proposed generator interconnection to the existing transmission system;

(B) identification of the electrical system impacts and a discussion of the mitigation measures considered and those proposed to maintain conformance with NERC, WSCC, Cal-ISO or other applicable reliability or planning criteria based on load flow, post transient, transient, and fault current studies performed by or for the transmission owner in accordance with all applicable Cal-ISO or other interconnection authority's tariffs, operating agreements, and scheduling protocols;

- (C) a full description of the facilities, if any, that are required for interconnection, including all such facilities beyond the point where the outlet line joins with the interconnected system and a full description of the environmental setting, environmental impacts, and any recommended mitigation measures proposed by the applicant for any required facilities beyond the point where the outlet line joins with the interconnected system;
- (4) a discussion of the potential for disproportionate impacts from the project on minority or low-income people; such discussion shall include, but not be limited to, all of the following:
- (A) the most recent estimates or projections of demographic information by census tract showing the number and percentage of minority populations and people living below the poverty level within six miles of the proposed site and identified alternative sites(s);
 - (B) one or more maps at a scale of 1:24,000 showing the distribution of minority populations and low-income populations and significant pollution sources within six miles of the proposed site, such as those permitted by the U.S. Environmental Protection Agency (Toxic Release Inventory sites), the local air quality management district, or the California Department of Toxic Substances Control; and
 - (C) identification of available health studies concerning the potentially affected population(s) within a six-mile radius of the proposed power plant site;
- (5) the following information to demonstrate that the project, if certified, is likely to be constructed and operated;
- (A) information demonstrating the applicant's control, by ownership, lease, option, or other legally binding agreement that the Commission finds acceptable, of the proposed site; **[Alternative language: information demonstrating the applicant's control, by ownership, lease, option, or other legally binding agreement that the Commission finds acceptable, of the proposed site, including the proposed site for all appurtenant linear facilities within the jurisdiction of the commission;]**
 - (B) a will-serve letter or similar document from each provider of water to the project, indicating each provider's willingness to provide water to the project and describing all conditions under which the water will be provided, and a discussion of all other contractual agreements with the applicant pertaining to the provision of water to the project;

- (C) a demonstration that the project will have a reliable and sufficient supply of fuel without causing any significant adverse impact upon the fuel supply system;
- (D) a demonstration that all of the project's gas turbine generators, steam turbine generators, heat recovery steam generators, and boilers:
 - (i) have been ordered and
 - (ii) have been manufactured,
 - (iii) are currently in manufacture, or
 - (iv) will be manufactured in time to meet the proposed construction schedule; and
- (E) a demonstration that the applicant has obtained a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the powerplant.

Section 2023. Data Adequacy Review and Acceptance.

- (a) Upon the receipt of an application filed pursuant to this Article, the executive director or a delegatee shall review all documentation to determine whether the application contains all the information required by section 2022 and is, therefore, complete. The review of the application for completeness shall be in accordance with section 1709.
- (b) No later than 45 days after receipt of an application, the commission shall act upon the executive director's recommendation as to whether the application contains the information required by section 2022 and is, therefore, complete. If the commission determines that the application is complete, the application shall be accepted as of that date and the proceeding for reaching a final decision within six months shall begin. Based on meeting the information requirements of section 2022, the application shall be considered to be an initial showing that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, and laws.
- (c) If the commission determines that the application contains all of the information required by Appendix B to this Chapter, but not all of the additional information required by section 2022, the application shall be deemed accepted for a purposes of reaching a final decision within 12 months.

- (d) If the commission determines that the application is incomplete with respect to Appendix B to this Chapter, the application shall not be accepted. The commission shall indicate in writing those parts of the application that fail to meet the information requirements and the manner in which they can be made complete.
- (e) The applicant may file additional data and the commission, in accordance with section 1709, shall determine, within 30 days of receipt of the data, whether the data is sufficient to complete the application.

Section 2024. Intervention

Any person may file a petition to intervene within 100 ~~[30]~~ **[75]** days after the acceptance of an application. The petition shall be served upon all parties.

Section 2025. Discovery.

Within 90 ~~[75]~~ days after acceptance of the application, any party may file a data request of the applicant or of any other party. Absent an objection pursuant to section 1716(f), the applicant shall provide the information requested within 20 days of the date that the request is made.

Section 2026. Agency Comments.

- (a) Within 60 days after the acceptance of an application under this Article, all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their preliminary comments, determinations, and opinions.
- (b) Within 100 days after the acceptance of an application, all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their preliminary comments, determinations, and opinions.

Section 2027. Staff Reports

- (a) Within 60 ~~[75]~~ days after acceptance of an application that is eligible for a six-month decision, the staff shall file an initial report of the environmental impacts and other aspects of the proposed project in accordance with sections 1742.5, 1743, and 1744. Based on information known and available to the staff, the staff's initial report shall:
 - (1) discuss whether the project complies with all applicable standards, ordinances, and laws,

- (2) identify and assess the impacts that may result from the project on the environment,
 - (3) identify and assess the impacts that may result from the project on the electrical system,
 - (4) assess the sufficiency of the mitigation as proposed by the applicant,
 - (5) recommend mitigation where the staff believes it is needed in addition to or as an alternative to that proposed by the applicant,
 - (6) discuss the feasibility of available site and facility alternatives that substantially lessen the significant adverse impacts of the project on the environment, and
 - (7) identify the areas in need of further analysis that will be the focus of the final staff report on the project.
- (b) Within 120 days after the acceptance of an application, the staff shall file a final report on the proposed project in accordance with sections 1742.5, 1743, and 1744. The staff's final report may focus on those areas identified for further analysis in the staff's initial report and may incorporate by reference or otherwise rely on the initial report for all other areas. The report shall serve as the staff's final assessment of the project and be presented as testimony at the hearings under section 2027.

Section 2028. Removal of the Project from the Six-Month Process.

- (a) At any time after acceptance of the application, any party may petition the committee to remove the project from the provisions of this Article and thereby change the deadline for a commission decision from six months after acceptance to twelve months after acceptance. The petition shall show that there is substantial evidence in the record that the project:
- (1) may result in a significant adverse impact on the environment;
 - (2) may result in a significant adverse impact on the electrical system;
 - (3) does not comply with an applicable standard, ordinance, or law; or
 - (4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy.

The petition shall be served on all parties.

- (b) Any person, or if the petition is filed more than 100 ~~[75]~~ ~~[30]~~ days after acceptance of the application, any party, may comment on the petition in writing within 10 days after the petition is served.
- (c) Within 20 days after filing of the petition, the committee shall determine whether there is substantial evidence in the record that the project:
 - (1) may result in a significant adverse impact on the environment;
 - (2) may result in a significant adverse impact on the electrical system;
 - (3) does not comply with an applicable standard, ordinance, or law; or
 - (4) has changed substantially from what was proposed in the application and requires substantial new analysis or generates substantial public controversy.
- (d) If the committee's determination with respect to subsection (1), (2), or (3) are in the affirmative, the committee shall grant the petition and order that the application shall no longer be reviewed under this Article and that a final decision on the application shall be reached within 12 months of acceptance of the application in accordance with Public Resources Code section 25540.6.
- (e) If the committee's determination with respect to subsection (4) is in the affirmative, the committee may, but need not, grant the petition.
- (f) The committee's grant or denial shall be effective 5 days after it is filed in the Docket and served on all parties, unless it is appealed under subsection (g), in which case the ruling is stayed until the Commission rules on it.
- (g) Any party may appeal the committee's ruling within 5 days after it is filed in the Docket and served on all parties. The commission shall rule on an appeal at the next earliest business meeting for which there is sufficient time for public notice of the appeal as a item on the agenda. In ruling on the appeal the commission shall use the criteria in subsection (c).
- (h) The time between a committee ruling on a petition and final commission disposition of the matter shall not be counted in the calculation of any deadlines pursuant to this Article.

Section 2029. Hearings.

- (a) Within 135 to 150 days after acceptance of the application, the committee shall hold evidentiary hearings.

- (b) Any party may submit testimony in accordance with a schedule determined by the committee.

Section 2030. Presiding Member s Proposed Decision; Commission Decision.

- (a) Within 20 days after the end of the hearings held under section 2029, the presiding member of the committee shall, in consultation with the other committee member, file in the Docket and serve on all parties a proposed decision in accordance with sections 1749, 1751, 1752, 1752.3, and 1752.5.
- (b) Within 15 days after filing and service of the presiding member s proposed decision, any person may file and serve written comments.
- (c) Within 30 days after filing and service of the presiding member s prposed decision, the commission shall hold a hearing and either:
 - (1) grant a certificate to the project;
 - (2) deny the application for certifcation; or
 - (3) determine, using the criteria in Section 2028(c), that a final decision on the application shall be made within twelve months of its acceptance.
- (d) The Commission shall not grant a certificate unless it finds that:
 - (1) the project will not cause a significant adverse impact on the environment;
 - (2) the project will not cause a significant adverse impact on the electric system;
 - (3) the project will comply with all applicable standards, ordinances, and laws;
 - (4) the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the project; and
 - (5) the project complies with all regulations adopted by the Commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

Section 2031. Construction Deadline.

- (a) The deadline for the commencement of substantial construction of the project shall be 12 months after the effective date of the decision on an application accepted and processed pursuant to this section.
- (b) Substantial construction shall be defined as the following:
 - (1) completion of at least thirty percent of the engineering design of the entire project and
 - (2) completion of at least five percent of the physical construction of the entire project, absent circumstances beyond the control of the applicant.

Section 2032. Example Schedule.

For a six-month schedule, the committee can be expected to pursue a schedule similar to the one set forth below, subject to the discretion of the presiding member pursuant to section 1203:

<u>Days</u>	<u>Event</u>
0	Acceptance of application as complete; commencement of six-month schedule
[30]	[Deadline for intervention]
35 (or earlier)	Staff files issues identification report (section 1709.7(b))
45 (or earlier)	Informational hearing and site visit
60	Staff files initial report; agencies file preliminary comments
[75]	[Staff files initial report] [deadline for intervention]
100	Agencies file final comments; deadline for intervention
120	Staff files final report; all parties file testimony
125	Prehearing conference
130 135	Hearing(s)
150	Presiding member s proposed decision
165	Committee hearing to receive comments
180	End comment period; final decision